

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JIMMY SMITH,

Plaintiff,

v.

CITY OF BERKELEY, et al.,

Defendants.

Case No. [15-cv-05197-JSC](#)

**ORDER APPROVING SUBSTITUTION
OF COUNSEL AND GRANTING
EXTENSION OF TIME FOR SERVICE**

Re: Dkt. No. 9

Plaintiff Jimmy Smith (“Plaintiff”) brings this civil action against the City of Berkeley. The Court previously granted Plaintiff’s Application to Proceed In Forma Pauperis (“IFP”). (Dkt. No. 4.) At that time, the Court also evaluated Plaintiff’s complaint under 28 U.S.C. § 1915(e)(2) and found it sufficient to proceed to service by the U.S. Marshal. (*Id.*) After Plaintiff, then proceeding pro se, failed to respond to the Clerk’s Office request for an address for one of the defendants and failed to appear at the case management conference or submit a statement as required, the Court ordered Plaintiff to show cause why this action should not be dismissed pursuant to Federal Rule of Civil Procedure 41(b). (Dkt. No. 8.)

Plaintiff has filed a timely response to the show cause order. (Dkt. No. 9.) Though it offers no explanation for Plaintiff’s prior failures to comply with the Clerk’s Office’s requests or the Court’s orders, the response is a request for substitution of counsel and for a 90-day continuance to amend and serve the complaint. (*Id.*) Having considered Plaintiff’s response, the Court excuses Plaintiff’s prior lapses, which appeared to have occurred while he was in the process of retaining counsel to represent him in this matter. The substitution of counsel is approved.

With respect to the request for an extension of time to amend and serve the complaint,

1 Plaintiff need not seek leave to amend at this time, as he may do so as of right. *See* Fed. R. Civ. P.
2 15(a)(1). However, any amended complaint will be subject to renewed Section 1915 review
3 before proceeding to service. As for the timing of service, the new Federal Rule of Civil
4 Procedure 4(m) shortened the time to serve the complaint to 90 days. *See* Fed. R. Civ. P. 4(m);
5 *see also* Advisory Comm. Notes to 2015 Amendment to Rule 4(m) (“The presumptive time for
6 serving a defendant is reduced from 120 days to 90 days. This change . . . will reduce delay at the
7 beginning of litigation.”). That deadline has passed. However, in light of the new substitution of
8 counsel and because the U.S. Marshal is to serve the complaint given Plaintiff’s IFP status, *see*
9 Advisory Comm. Notes to 2015 Amendment to Rule 4(m) (“More time may be needed [for
10 service], for example, when . . . a marshal is to make service in an in forma pauperis action.”), the
11 Court finds good cause to extend the time for service for 90 days, or until **May 25, 2016**.

12 **IT IS SO ORDERED.**

13 Dated: February 25, 2016

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16 JACQUELINE SCOTT CORLEY
17 United States Magistrate Judge
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